CLASSIFICATION OFFICE DECISION

Title of publication:	5521408.jpg
Other known title(s):	Not stated
OFLC ref:	1000726.000
Medium:	Computer Image File Printout
Publisher:	Not stated
Country of origin:	New Zealand
Language:	Not applicable
Applicant:	Commissioner of Police
Classification:	Objectionable except if the availability of the publication is restricted to the person depicted in this publication.
Descriptive note:	None
Display conditions:	None
Date of entry in Register:	17 June 2010
Date of direction to issue a label:	No direction to issue a label has been issued

Summary of reasons for decision:

The availability of the computer image file is restricted to the person depicted in the image. This classification is necessary to minimise the injury to the public good that is likely to arise from the manner in which the nudity of the subject, a young person, is exploited by the publication.

The computer image file consists of a photograph of a teenage girl posing, naked from the waist up. The subject appears to have taken the photo herself. The close focus on her breasts means that the image is reasonably capable of being regarded as sexual in nature under s3(1A) of the Films, Videos, and Publications Act 1993 (FVPC Act). While her physical development belies her actual age, and it is not immediately obvious that the she is a young person, the Classification Office has been made aware of the subject's age through a Police submission, which was accompanied by her birth certificate.

Given that the average viewer would not necessarily read the image as being of a young person, the publication cannot fairly be said to promote or support, or tend to promote or support, the exploitation of young persons for sexual purposes under s3(2)(a) of the FVPC Act.

The publication has been considered under s3(3)(b) of the FVPC Act, where the question is: to

what extent and degree, and in what manner, does this photo exploit the nudity of a young person? The subject of the image is clearly identifiable. A reasonable person would be entitled to the view that anyone who came upon this photo, who was able to identify the subject and to see her partially naked, would say that the photo, to a large extent, a high degree and in a sleazy manner, exploited the nudity of a young person. The risk of injury to the public good that could result from the unrestricted availability of the publication is that it could lead those people who can identify the subject to believe that she is available or even exploitable for sexual purposes. A classification restricting the photo to the subject limits its availability, and consequently minimises the likelihood of injury to the public good.

The Classification Office has considered the effects of the New Zealand Bill of Rights Act 1990 on the application of all the classification criteria. The right to freedom of expression has been weighed against the likelihood of injury to the public good arising from the availability of the publication. Restricting the publication to the subject in the image is reasonable and demonstrably justified in order to prevent the injury identified.